

**A RESOLUTION BY:**

**CITY UTILITIES COMMITTEE**

**02-*R*-0733**

**A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE, THE PURCHASING DIRECTOR, TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH WAYNE MILLER, RONNIE MILLER, PEGGY MILLER MARBACH, ERIC MILLER AND CAPITOL MATERIALS INCORPORATED, OR THEIR DESIGNEE(S), FOR THE INSTALLATION OF PRIVATE UTILITY FACILITIES CROSSING OVER BISHOP STREET IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.**

**WHEREAS,** Wayne Miller, Ronnie Miller, Peggy Miller Marbach and Eric Miller ("Millers") are the owners of a commercial office building complex (the "Development"), commonly known as 451 Bishop Street, that has been developed for lease to tenants engaged in commercial and light industrial businesses;

**WHEREAS,** Capitol Materials Incorporated ("Capitol Materials") is the owner of the property located at 464 Bishop Street, across the street from the Development, where it operates a business engaged in the sale of materials that are used by the construction industry;

**WHEREAS,** Capitol Materials is desirous of maintaining and expanding its business in the City, requires additional space within which to operate and has negotiated an agreement with the Millers to lease space within the Development;

**WHEREAS,** in order to service the business of its customers, it is necessary for Capitol Materials to connect the telecommunications services of its business located at 464 Bishop Street with the telecommunications services for the expansion that will be located at the Development;

**WHEREAS,** Capitol Materials has approached the City seeking an encroachment ("Encroachment") that will allow the installation of a strand of fiber optic cable that will extend from its offices located at 464 Bishop Street to the Development; the fiber optic cable will cross over Bishop Street utilizing an existing utility pole;

**WHEREAS,** the Director of the Bureau of Buildings and the Commissioner of the Department of Public Works have reviewed the plans for the Development and the installation of the Encroachment over Bishop Street, have determined that the plans meet the appropriate technical requirements and believe it to be desirable and in the best interests of the City to authorize the City to execute an Encroachment Agreement with the Millers and Capitol Materials allowing the installation of the Encroachment.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AS FOLLOWS:**

- Section 1.** The Mayor or his designee, the Purchasing Director, are each authorized to enter into an Encroachment Agreement, as outlined in Section 138, Article II, of the City's Code of Ordinances, with the Millers and Capitol Materials, or their designee(s), for the installation of the Encroachment over the right-of-way of Bishop Street, in a form and pursuant to conditions determined by the Commissioner of the City's Department of Public Works and the City Attorney to be desirable, appropriate and in the best interests of the City for this transaction, provided, however, that the performance bond requirements set forth in Section 138, Article II, of the City's Code of Ordinances are waived.
- Section 2.** That the City Attorney is directed to prepare an Encroachment Agreement in accordance with Section 138, Article II, of the City's Code of Ordinances.
- Section 3.** That the Encroachment Agreement will not become binding upon the City and the City will incur no liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk and delivered to the appropriate parties.